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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,946	09/29/2003	Ashish Varma	PA1436	8308
28390 7590 01/07/2009 MEDTRONIC VASCULAR, INC. IP LEGAL DEPARTMENT 3576 UNOCAL PLACE SANTA ROSA, CA 95403				
EXAMINER MCKANE, ELIZABETH L.				
ART UNIT		PAPER NUMBER		
1797				
NOTIFICATION DATE		DELIVERY MODE		
01/07/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rs.vasciplegal@medtronic.com

Office Action Summary

Application No.

10/671,946

Applicant(s)

VARMA ET AL.

Examiner

ELIZABETH L. MCKANE

Art Unit

1797

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 7-15 and 17-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 5, 7, 8, 11-13, 15 and 17-22 is/are allowed.
- 6) ☒ Claim(s) 9, 10, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 9, 10, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (US 2003/0083616) in view of Ahlqvist et al. (US 5,881,534).

Claims 9, 10, 23, and 24 are product-by-process claims. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claims is unpatentable even though the prior product was made by a different process. In the instant case, the product made by the process is rendered obvious by the product produced by method of the combination of Lee et al. with Ahlqvist et al..

Specifically, Lee et al. teaches a method of sterilizing a catheter balloon susceptible to degradation by ionizing radiation. The balloons are fabricated from polyether block amides (PEBAX). In the method of Lee et al., the balloon is packaged in the sealed interior space of a package **32** capable of providing a barrier to atmospheric oxygen wherein the package includes a first layer including a plastics coated foil and a porous second layer (paragraph [0026]). The balloon and the package are evacuated down to 50 mTorr to remove all air and oxygen from the balloon and

package and the package backfilled with nitrogen. See paragraphs [0008-0009]. The level of vacuum disclosed by Lee et al. in combination with the nitrogen flush would have intrinsically been capable of reducing the oxygen content to the level claimed. To sterilize the balloon, the balloon within the container is exposed to electron beam radiation at a dose of 3-10 Mrad (30-100 kGy). See paragraph [0024]. Lee et al. is silent with respect to use of an oxygen absorber. Ahlqvist et al., however, discloses a method of sterilization of sensitive polymeric medical devices wherein the devices are placed within sealed packages along with an oxygen absorber (contained within a second sealed interior space) and irradiated with electron beam radiation. See col.6, line 48 to col.7, line 21. The oxygen absorber is effective to assure low-oxygen conditions of the sealed package during extended periods of storage. Thus, for this reason it would have been obvious to one of ordinary skill in the art at the time of the invention to use an oxygen scavenger within the sealed package of Lee et al. to remove essentially all of the oxygen from the sealed package. The resulting product produced by this method is the same as that produced by the method of the instant invention.

Allowable Subject Matter

3. Claims 1-3, 5, 7, 8, 11-13, 15, and 17-22 are allowed.

Response to Arguments

4. Applicant's arguments with respect to claims 9, 10, 23, and 24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH L. MCKANE whose telephone number is (571)272-1275. The examiner can normally be reached on Mon-Fri; 5:30 a.m. - 2:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth L McKane/
Primary Examiner, Art Unit 1797

elm
2 January 2009